

AG Contract No.: KR04-1058TRN  
ADOT ECS File No.: JPA 04-069  
Project No.: HRF-WIN-0-805  
Project: Mike's Pike Phase 3  
TRACS No.: HF105 01C  
Budget Source Item No.: N/A  
HURF Exchange Program

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF WINSLOW

THIS AGREEMENT is entered into 14th September, 2004, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF WINSLOW, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has approved the exchange of \$590,039.00 in Highway User Revenue Funds (HURF) in Fiscal Year 2004 to the City for paving of roadway, and such funds will be repaid to the State by withholding from the Northern Arizona Council of Governments (NACOG) federal funds and the obligation authority for federal funds in the amount of \$612,060.00 in Fiscal Year 2004.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 27080  
Filed with the Secretary of State  
Date Filed: 09/14/04

Janice K. Brewer  
Secretary of State

By: Darryl D. Graenewald

## **II. SCOPE OF WORK**

### **1. The City will:**

a. Provide design plans, specifications and such other documents and services required for bidding and roadway paving construction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the project construction cost, at the start of construction.

d. Invoice the State for thirty percent of the project construction cost, at the thirty percent and sixty percent project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the project construction cost at the one hundred percent project construction completion stage, after the City, NACOG, and the State (ADOT) representatives have completed final project review.

### **2. The State will:**

a. Within 30 days after receipt of a letter confirming the construction project has been awarded, advance the City thirty percent of the HURF funds.

b. Within 30 days after receipt and approval of construction invoices at the sixty and ninety percent construction completion stages, advance the City HURF funds in the amount of thirty percent at each invoiced stage for construction.

c. Within 30 days after receipt and approval of construction invoices for the remaining ten percent of the project construction, advance the City HURF funds in the final ten percent amount of the \$590,039.00 for construction.

d. Withhold from NACOG, federal funds and the obligation authority of federal funds \$612,060.00 in Fiscal Year 2004 for roadway paving construction.

## **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The City shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The City shall also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold

harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ. 85007  
FAX (602) 712-7424

City of Winslow  
City Manager  
21 Williamson Avenue  
Winslow, AZ 86047

10. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF WINSLOW

STATE OF ARIZONA

Department of Transportation

By


  
JAMES L. BOLES  
Mayor

By

  
DALE BUSKIRK, Division Director  
Transportation Planning Division

ATTEST

By

  
SUZY WETZEL  
City Clerk

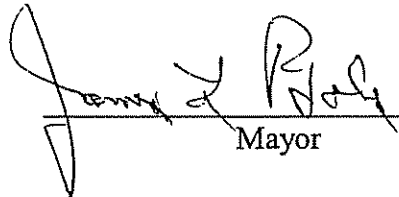
RESOLUTION NO. 1295

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF WINSLOW, ARIZONA, APPROVING THE INTER-  
GOVERNMENTAL AGREEMENT WITH ARIZONA  
DEPARTMENT OF TRANSPORTATION RE: MIKE'S PIKE  
PHASE THREE


BE IT RESOLVED by the City Council of the City of Winslow, Arizona, that the City Council authorizes the City to enter into the Intergovernmental Agreement JPA04-069 which is between the City of Winslow and the Arizona Department of Transportation for improvements known as Mike's Pike Phase III referred to in the Intergovernmental Agreement attached hereto and made a part hereof by reference.

BE IT FURTHER RESOLVED that the Mayor of the City of Winslow, Arizona is authorized to execute the agreement on behalf of the City of Winslow.

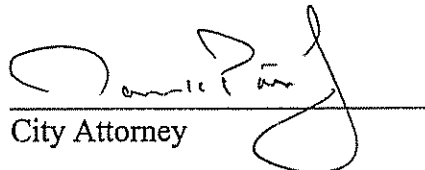
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WINSLOW,  
ARIZONA, this 24<sup>th</sup> day of August, 2004.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

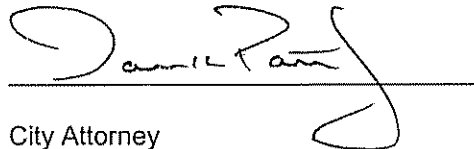
APPROVED AS TO  
FORM AND CONTENT:

  
\_\_\_\_\_  
City Attorney

APPROVAL OF THE CITY OF WINSLOW ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF WINSLOW, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 24<sup>th</sup> day of August, 2004.

  
\_\_\_\_\_  
City Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

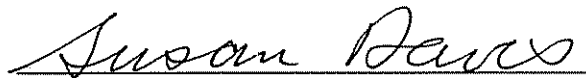
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1058TRN (**JPA 04-069**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: September 8, 2004.

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:dgr  
Attachment  
865469